

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

DANIEL LEE BEST,

Plaintiff,

v.

Case No. 2:09-cv-00646

SUBHASH GAJENDRAGADKAR,

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

This matter is assigned to the Honorable Joseph R. Goodwin, Chief United States District Judge, and it is referred to the undersigned for submission of proposed findings and a recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Pending before the court is Plaintiff's Motion for Default Judgment (docket sheet document # 55).

Defendant Subhash Gajendragadkar, who is the sole remaining defendant herein (hereinafter "Defendant"), was served with a summons on July 15, 2009 (# 15). Thereafter, Defendant filed a Motion to Dismiss (# 21). By Memorandum Opinion and Order entered on March 29, 2010, the presiding District Judge, inter alia, denied Defendant's Motion to Dismiss concerning two of Plaintiff's claims.

Under the Federal Rules of Civil Procedure, a defendant shall file an Answer within 14 days of the denial of a Motion to Dismiss.

See Fed. R. Civ. P 12(a)(4). Defendant did not do so, which is

the basis for Plaintiff's Motion for Default Judgment.

However, on July 16, 2010, Defendant filed a Response to the Motion for Default Judgment (# 62). The Response argues that, after the ruling on the Motion to Dismiss, "there was nothing left of the Complaint to answer." (Id. at 2). Defendant's Response further argues:

It is obvious that Dr. Gajendragadkar has appeared and vigorously [sic; vigorously] defended the claims of the plaintiff. The plaintiff has not shown any prejudice to him by the failure to file an Answer. There can be no doubt to the plaintiff nor the Court the position of Dr. Gajendragadkar with respect to the two (2) claims which were left in place by the Motion to Dismiss.

(Id.). Furthermore, in order to attempt to comply with the rule, Defendant filed an Answer to the Complaint on July 19, 2010, attempting to respond to the two remaining claims. (# 65).

The undersigned believes there is good cause for the delay in Defendant's filing of its Answer, and that Plaintiff has suffered no prejudice therefrom. Therefore, the undersigned proposes that the presiding District Judge **FIND** that leave should be granted to Defendant to file his Answer out of time and that Plaintiff is not entitled to a default judgment against Defendant. It is respectfully **RECOMMENDED** that the presiding District Judge **DENY** Plaintiff's Motion for Default Judgment (# 55).

The parties are notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District

Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections), and then three days (mailing), from the date of filing this "Proposed Findings and Recommendation" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendation" to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to the opposing parties and Chief Judge Goodwin.

The Clerk is directed to file this "Proposed Findings and Recommendation" and to mail a copy of the same to Plaintiff and counsel of record.

November 22, 2010
Date


Mary E. Stanley
United States Magistrate Judge